



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052-AD18

Releasing Information; Availability of Records of the Farm Credit Administration; FOIA Fees

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees.

DATES: This regulation will become effective no earlier than 30 days after publication in the Federal Register during which either one or both Houses of Congress are in session. We will publish a notice of the effective date in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to reflect changes to the FOIA by the FOIA Improvement Act of 2016 (Improvement Act). The Improvement Act added additional protections for requesters of records held by the executive branch of the U.S. Government.

II. Background

The FOIA was enacted to give the public a right to access records held by the executive branch that, although not classified, were not otherwise available to them.¹ Since its enactment in 1966, the FOIA has been amended on a number of occasions to adapt to the times and changing priorities.

¹ Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, sec.1, June 5, 1967, 81 Stat. 54; Pub. L. 93-502, secs.1-3, Nov. 21, 1974, 88 Stat. 1561-1564; Pub. L. 94-409, sec.5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-454, title IX, sec.906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98-620, title IV, sec.402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99-570, title I, secs.1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49; Pub. L. 104-231, secs.3-11, Oct. 2, 1996, 110 Stat. 3049-3054; Pub. L. 107-306, title III, sec.312, Nov. 27, 2002, 116 Stat. 2390; Pub. L. 110-175, secs.3, 4(a), 5, 6(a)(1), (b)(1), 7(a), 8-10(a), 12, Dec. 31, 2007, 121 Stat. 2525-2530; Pub. L. 111-83, title V, sec.564(b), Oct. 28, 2009, 123 Stat. 2184.

III. FOIA Procedures

The Improvement Act contains several substantive and procedural amendments to the FOIA, as well as new reporting requirements for agencies.² The Improvement Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Improvement Act also updates how fees are assessed.

IV. Section-by-Section Analysis

A. Section 602.8

We revise § 602.8 by:

1. Changing the appeals deadline from 30 days to 90 days in paragraph (a); and

2. Adding FCA's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (d).

B. Section 602.12

We revise § 602.12 by adding paragraphs (f), (g), and (h) with updated information about charging fees.

C. Section 602.16

² Pub. L. 114-185, June 30, 2016.

We revise § 602.16 by removing the last line of the paragraph, which requires FCA to assume multiple requests made within 30 days have been made to avoid fees.

V. Certain Findings

We have determined that the amendments mandated by the Improvement Act involve agency management and technical changes. Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553(a)(2). Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to agency management and technical changes only and are required by statute, and therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(B) of the APA, an agency may publish regulations in final form when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest. The proposed amendments are required by statute, are not a matter of agency discretion, and provide additional protections to the public through

the existing regulations. Thus, notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System (System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 602

Courts, Freedom of information, Government employees.

As stated in the preamble, part 602 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 602 - RELEASING INFORMATION

1. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.59 of 92-181, 85 Stat. 583 (12 U.S.C. 2243, 2252, 2277a-8); 5 U.S.C. 301, 552; 52 FR 10012; E.O. 12600; 52 FR 23781, 3 CFR 1987, p. 235.

Subpart B—Availability of Records of the Farm Credit Administration

2. Section 602.8 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 602.8 Appeals.

(a) How to appeal. You may appeal a total or partial denial of your FOIA request within 90 calendar days of the date of the denial letter. Your appeal must be in writing and addressed to the Director, Office of Agency Services (OAS), Farm Credit Administration. You may send it:

- (1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102-5090;
- (2) By facsimile to (703) 893-2608; or
- (3) By E-mail to foiaappeal@fca.gov.

You also have the right to seek dispute resolution services from FCA's FOIA Public Liaison and the Office of Government Information Services.

* * * * *

(d) How to seek dispute resolution services.

Requesters may seek dispute resolution services from:

- (1) FCA's FOIA Public Liaison;

(i) By mail addressed to FOIA Public Liaison, 1501 Farm Credit Drive, McLean, Virginia 22101-5090;

(ii) By facsimile at 703-790-3260; or

(iii) By E-mail at FOIAPublicLiaison@fca.gov.

(2) Office of Government Information Services;

(i) By mail to Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road - OGIS, College Park, Maryland, 20740-6001;

(ii) By facsimile at (202) 741-5769; or

(iii) By E-mail at ogis@nara.gov.

Subpart C-FOIA Fees

3. Section 602.12 is amended by adding paragraphs (f), (g) and (h) to read as follows:

§ 602.12 Fees.

* * * * *

(f) We will not assess fees if we fail to comply with any time limit under the FOIA or these regulations, and have not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the

requester, we may be excused an additional 10 working days before fees are automatically waived under this paragraph.

(g) If we determine that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, we may charge fees if we provided a timely, written notice to the requester and discussed with the requester via mail, E-mail, or telephone (or made at least three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(h) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

4. Section 602.16 is revised to read as follows:

§ 602.16 Combining requests.

You may not avoid paying fees by filing multiple requests at the same time. When FCA reasonably believes that you, alone or with others, are breaking down one request into a series of requests to avoid fees, we will combine the requests and charge accordingly.

Date: September 9, 2016 Dale L. Aultman,
 Secretary,
 Farm Credit Administration Board.

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